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Remarks/Arguments**I. Preliminary Remarks**

Applicants' attorney appreciated the opportunity to have a telephonic interview with the Examiner on April 22, 2004 and appreciated all the suggestions made by the Examiner during the interview. Applicants' attorney agrees that the Interview Summary is appropriate.

Claims 35 and 36 were added by the previous amendment. As the Examiner recognized, claims 35 was misnumbered as claims 34 while claim 36 misnumbered as claim 35, both due to a clerical error. The claim numbers have been corrected in this amendment.

II. Status of Claims

Claims 1-36 were pending in the application.

Claims 8-14, 17-20, and 22-34 were withdrawn from consideration.

Claims 2, 3, 5-7, 35 are allowed.

Claims 1, 4, 15 and 16 are rejected.

Claim 36 is objected to.

Claims 1 and 4 are cancelled.

Claim 7 is amended to change its dependency from claim 6 to claim 2 in accordance with the Examiner's suggestion.

Claims 15 and 16 are amended to delete the reference to claim 1, which is necessitated by the cancellation of claim 1.

Claim 35 is amended to include the phrase "consisting of" in accordance with the Examiner's suggestion.

Thus, after entry of this amendment, the claims currently pending are claims 2, 3, 5-7, 15, 16, 21, 35, and 36. The above amendments have added no new matter to the application.

The Office Action is silent with respect to the status of claim 21. Claim 21 is pending in the application, and was examined and rejected in the Office Action of July 29, 2003. Applicants responded to the rejection of claim 21 in the previous reply. As the rejection to this claim made in the previous Office Action is not reinstated in the current Office Action, in accordance with the Examiner's statement in paragraph 2 of the current

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Office Action, Applicants regard the rejection of claim 21 as having been withdrawn. Nonetheless, to place the claim in the best condition for allowance, Applicants have amend claim 21 to delete the recitation of claim 1, which is necessitated by cancellation of claim 1, and to delete the recitation of "α2δ-D," which is not part of the elected subject matter.

III. Responses to Objections/Rejections

1. Objection to Claim 36

Claim 36 is objected to as being substantial duplicate of new claim 35. The Examiner has kindly suggested to amend the claim to read:

— An isolated and purified DNA sequence consisting of a sequence which encodes a polypeptide of SEQ ID NO: 5.—

Applicants have amended claim 35 to read above. Accordingly, Applicants respectfully request that the objection to claim 36 be withdrawn.

2. Rejection to Claims 1, 4, 15, and 16 under 35 U.S.C. § 112, first paragraph

Claims 1, 4, 15, and 16 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner's basis for the rejection is that the recitation of percentage sequence identity in these claims is not supported by disclosure of the application. While Applicants do not agree with the Examiner, in order to expedite the allowance of other claims, Applicants have cancelled claims 1 and 4, which renders the rejection of these two claims moot. Applicants have also amended claims 15 and 16 to delete the reference to claim 1. Since claims 15 and 16 as amended now recite a DNA sequence of claim 2 or 3, which have been allowed, the rejection of claims 15 and 16 should be withdrawn. Applicants reserve the rights to pursue the cancelled subject matter in divisional applications.

In rejecting claims 1 and 4, the Examiner has kindly suggested that Applicants amend claim 7 to change its dependency to claim 2. Applicants appreciated the suggestion and have amended claim 7 accordingly.

3. Rejection to Claim 15 under 35 U.S.C. § 102(a) as Being Anticipated by Myers

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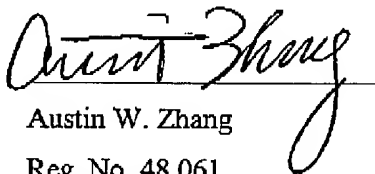
Applicants respectfully submit that Myers does not disclose all the elements of the claimed invention. One of the elements that is not disclosed by Myers is a pair of amplification primers each comprising at least 8 consecutive nucleotides of a polynucleotide of SEQ ID NO: 3. Specifically, "primer A" disclosed by Myers does not comprise "8 consecutive nucleotides of a polynucleotide of SEQ ID NO: 3." For this reason alone, Myers does not anticipate claim 15.

4. Rejection to Claim 16 under 35 U.S.C. §103 (a) as Being Obvious over Soares et al.

Applicants respectfully submit that a prima facie obviousness has not established by the Examiner for reasons, among others, the reference does not suggest or teach all claim limitations. Claim 16, as amended, recites a kit for detecting the presence of a DNA sequence of claim 2 or 3 in a test sample. Clearly, included in the limitations of claim 16 is a "DNA sequence of claim 2 or 3." Because the DNA sequence of claim 2 and 3 is novel and nonobvious and, therefore, has been allowed, claim 16, which includes this nonobvious limitation, is nonobvious as well. (*In re Fine*, 837 F.2d 1071, 5 UDPQ2d 1596 (Fed. Cir. 1988). For this reason alone, the obviousness rejection to claim 16 in view of Soares should be withdrawn.

For the above reasons, Applicants respectfully request reconsideration of the matter, withdrawal of the rejections and objections, and timely issuance of Notice of Allowance in this case.

Respectfully submitted,



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